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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.233

**CRM-M-11473-2025 (O&M)
Date of decision : 09.04.2025**

Jasbir Singh Parmar and another

..... Petitioners

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Sandeep Siwach, Advocate, for the petitioners.

Ms. Aakanksha Gupta, AAG, Punjab.

KIRTI SINGH, J. (Oral)

1. By way of the present petition filed under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity 'BNSS') prayer is for quashing of order dated 21.09.2012 (Annexure P3) vide which the petitioners have been declared as absconders in a complaint case bearing No. COM1 No.31072 of 2013 instituted on 07.06.2012 titled as Harvinder Kaur Vs. Jasbir Singh and others under Sections 323, 354, 452, 427, 148, 149, 504 & 506 of IPC and all subsequent proceedings arising out the same as the said complaint stands withdrawn vide order dated 28.07.2024.

2. It is the submissions of learned counsel for the petitioners that petitioners were abroad prior to their summoning in the aforesaid complaint and also at the time when the proclamation proceedings were initiated against them. Service to them in the said proceedings was not effected to them in compliance of Section 82 and 105 Cr.P.C, at their foreign address and therefore, due to this material irregularity, proclamation proceedings qua them deserves to be set aside. It is further submitted that a compromise has

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been effected between the parties on 09.07.2014 and the complaint has been withdrawn.

3. Per Contra, learned State counsel has opposed the petition and has submitted that the petitioners, despite the proclamation, has failed to appear before the trial Court and has been rightly declared a proclaimed offender vide the impugned order and in addition, the petitioner is evading the process of Court which is highly deprecated on their part and in view of the same, they do not deserve that the order declaring them as absconders be quashed.

4. Heard the rival submissions made by learned counsels for the parties.

5. A person cannot be said to “*abscond*” or “*evade*” the execution of warrant when he had gone to a distant place before the issue of the warrant. Dependence can be made on the judicial dictum rendered in the case of “*M.S.R. Gundappa v. State of Karnataka*” (1977 Cr LJ NOC 187), wherein it was held that a person who had gone abroad even before the issue of the warrant of arrest cannot be said to be absconding or concealing himself with the intention to disrupt the execution of that warrant.

6. Further, it is clear from the record that warrants of arrest were issued and proclamation proceedings initiated against the petitioners when they were abroad. There is nothing on record to show that the trial Court any effort to effect personal service of the petitioners through the embassy of India located in the concerned country where the petitioners were residing at the relevant time. Thus, making it clear that the impugned order was not

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passed in consonance with the mandate of Sections 82 & 105 of Cr.P.C. and is not sustainable in the eyes of law.

7. Therefore, in light of the afore-said judicial pronouncements and discussions made hereinabove, this Court is of the firm view that the impugned order dated 21.09.2012 (Annexure P3), vide which the petitioners have been declared absconders, is not sustainable in the eyes of law.

8. In view of the above, the present petition stands allowed and the impugned order dated 21.09.2012 (Annexure P3) is set aside/quashed **subject to payment of Rs.50,000/- to be deposited by the petitioners in Poor Patient Welfare Fund, PGIMER, Chandigarh.** In case, the petitioners files an appropriate application for grant of bail before the trial Court, the trial Court shall consider the same and release them on bail on furnishing their requisite bail/surety bonds to its satisfaction.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

09.04.2025

Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No